



Resource Development Council for Alaska, Inc.

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Founded 1975

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December 12, 2001

Mr. Randy Bates
Division of Governmental Coordination
Office of the Governor
P.O. Box 110030
Juneau, Alaska 99811-0030

Re: Draft Proposed ACMP Implementation Regulations

Dear Mr. Bates:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to express our serious concerns with DGC's draft proposed Alaska Coastal Management Program (ACMP) Implementation Regulations. The ACMP has an enormous impact on RDC's member companies from all basic industry sectors operating in nearly every region of Alaska. Developing a clear, well-organized, equitable framework for the ACMP will be critical to ensure Alaska's regulatory climate is one that does not unduly discourage private sector investment and economic development. We do not believe these proposed regulations succeed in this regard.

As you know, RDC is a private, membership-funded, non-profit trade association. Our members include individuals and leading companies from the mining, timber, oil and gas, tourism and fishing industries. Also within our ranks are local communities, Native corporations, organized labor and industry support firms. Our mission is to grow Alaska's economy through the responsible development of the state's natural resources.

In developing the following comments RDC has worked closely with the Alaska Oil & Gas Association, the Alaska Miners Association and the Alaska Support Industry Alliance, as well as many other individual companies within RDC's membership. Our concerns with the proposed regulations fall into four areas: A) schedule discipline, B) homeless stipulations, C) applicability and scope, and D) the elevation and petition process.

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Schedule Discipline

Of utmost importance is the creation of a clear, efficient, and predictable process for making consistency determinations under the ACMP. The unpredictable nature of the various timelines makes the process inherently difficult to navigate. As currently drafted, the regulations prevent an applicant from predicting when the process clock will start, let alone when it will end.

For example, there is no deadline for a determination of completeness, nor for publication of the required public notice. Moreover, the start day can be negotiated among the state agencies without the agreement of the applicant. Once the clock does start, extensive schedule modifications can be made at the discretion of the coordinating agency, again without the approval of the applicant. Most troubling is the ability to extend the schedule indefinitely for “complex issues.” Until more certainty can be injected into the review schedule, the regulated community will suffer unnecessary costs and delays.

Homeless Stipulations

The current practice of imposing homeless stipulations through the consistency review process is unlawful in our opinion. Unfortunately, the current draft regulations would institutionalize this practice and call into question the legality of the ACMP. In adopting the Alaska Coastal Management Act, the Legislature made a policy decision that the ACMP would not create yet another permit. The Legislature did not authorize the imposition of conditions under the ACMP. Neither the Coastal Policy Council, DGC, nor any other governmental entity is authorized to impose permit conditions to ensure consistency with the ACMP under AS46.40. Yet DGC’s regulations attempt to create a “networked” system by delaying project permits so that conditions no agency is authorized to impose can be attached to the agency permits under the auspices of the ACMP. Provisions within the proposed regulations that attempt to create substantive conditioning authority are invalid.

DGC should only determine whether the project, as proposed, is consistent or inconsistent. If DGC believes the project must be modified to be consistent, it should find the project inconsistent and identify the inconsistencies. Most applicants will continue to work with the resource agencies and DGC to address concerns and modify the project, if needed, before the final consistency determination.

Applicability & Scope

The proposed regulations lack clarity regarding applicability and scope. These issues are addressed in numerous provisions, none of which set forth the same standard. Moreover, the regulations provide no objective criteria for determining applicability or scope. Rather, each is left to the discretion of the coordinating agency on a case-by-case basis.

RDC recommends that applicability and scope be defined by the following three criteria. First, consistency reviews should only be required when the project is located within the defined boundaries of the coastal zone. Second, the scope of the review should be limited to those activities on the C-List. Finally, only those activities which have a “direct and significant impact to any coastal use or resource” should be reviewed. Both state and federal statute support use of the “direct and significant impact” standard.

Elevations & Petitions

The proposed elevation and petition processes are areas of unnecessary confusion and significant concern to RDC. As currently drafted, it is not possible to complete the petition process in 30 days as state law requires. This discrepancy must be corrected. Furthermore, the two-tiered elevation system is overly cumbersome and of limited benefit, and therefore RDC proposes the director-level elevation be eliminated. The elevation process should consist only of a single review by the agency commissioners. This change alone will greatly simplify the process.

Conclusion

RDC believes the ACMP process is intended to serve a procedural coordination function that networks existing resource agency permitting authorities as they apply to projects having a significant and direct impact on coastal resources. In fact, in many cases our members have come to appreciate and rely upon the coordination aspects of the ACMP process. However, the benefits of the coordination function to the regulated community are outweighed in the proposed regulations by lack of schedule discipline, lack of clarity regarding applicability and imposition of unlawful homeless stipulations.

RDC understands the time and effort DGC has put into the development of these proposed regulations. We appreciate the many productive changes that have been incorporated in the latest draft. Nevertheless, there remain several substantial shortcomings in our view. As an alternative to the current process, we suggest DGC consider negotiated rulemaking in an effort to move forward in a productive and meaningful way. This opportunity to make real and effective regulatory improvements to encourage ongoing investment in the economic growth and development of Alaska should not be rushed.

Thank you for your consideration and please do not hesitate to contact me with any questions.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.



Tadd Owens
Executive Director

cc: Governor Tony Knowles
Lieutenant Governor Fran Ulmer
Pat Galvin, Director, DGC
Commissioner Pat Pourchot, DNR
Commissioner Michele Brown, DEC
Commissioner Frank Rue, DF&G